

**IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA**

GEORGE PIERCE

1606 Hayes Ave

Fremont, OH 48788

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY,**

2707 Martin Luther King Jr. Avenue SE

Washington, D.C. 20528

**U.S. CUSTOMS AND BORDER
PROTECTION,**

1300 Pennsylvania Ave NW

Washington, D.C. 20229

Defendants.

COMPLAINT

1. Plaintiff, GEORGE PIERCE, brings this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION to produce certain records pertaining to him. In violation of FOIA, Defendants have failed to issue a determination for over a year.

PARTIES

2. Plaintiff GEORGE PIERCE made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. CUSTOMS AND BORDER PROTECTION (“CBP”) is a component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

FEBRUARY 18, 2018, FOIA REQUEST (VINCENT EMAILS)

7. On February 18, 2018, PIERCE submitted a FOIA request to CBP for the following records: [1] “Emails in BPA-I Christopher Vincent’s Outlook email account that contain ‘BPA George Pierce,’ ‘BPA Pierce,’ or ‘GP’ in the subject line or body, and releasable attachments or responses to these emails when searched by a keyword search. These emails should be limited to the period from June 1, 2017 to the final date that this request is processed.”; [2] “Emails in SOS Shawn M. Wilson’s Outlook email account that contain the words ‘great job,’ ‘good job,’ or ‘great work’ in the subject line or body when searched by a keyword search. These emails can be redacted to only show the ‘to’ and ‘from’ lines, the subject line, the date and time the emails were sent and the signature or closing areas of the body. These emails should be limited to the period from June 1, 2017 to the final date that this request is processed”; and [3] “An email sent from Operations Officer Sturgeon to BPA George Pierce on June 27, 2017 at 8:33AM, ‘out of office reply.’” Exhibit A.

8. On March 21, 2018, CBP sent an automated notice that acknowledges receipt of the request and assigned the reference number CBP-2018-032355 to the matter. Exhibit B.

9. Over the next few months, PIERCE asked CBP many times for an update regarding the request.

10. On January 1, 2019, understanding CBP’s failure to respond to this and other requests as constructive denials, PIERCE appealed. Exhibit C.

11. The appeal was assigned reference number CBP-AP-2019-020116. Exhibit C.

12. On February 7, 2019, CBP responded and treated the appeal as a “letter inquiring about a FOIA request.” In this letter, CBP confirmed receipt of March 21, 2018, FOIA request, but did not indicate when CBP would respond to the request. Exhibit D.

13. On March 15, 2019, in response to PIERCE’s request for assistance, Office of Government Information Services (OGIS) further informed that CBP denied the appeals because Pierce’s requests are pending. OGIS also included that CBP “does not consider its delay in responding your requests to be adverse determinations subject to appeal.” Exhibit E.

14. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

MARCH 3, 2018, FOIA REQUEST (THOMPSON EMAILS)

15. On March 3, 2018, PIERCE submitted a FOIA request to CBP for the following records: [1] “Emails in SBPA David Thompson’s Outlook email account or archived account that contain ‘BPA George Pierce’, ‘BPA Pierce’, or ‘GP’ or any relevant variation thereof, in the subject line or body, and any attachments or responses to these emails when searched by a keyword search. These emails should be limited to the period from June 1, 2017 to the final date that this request is processed. These emails will be located at Border Patrol’s Detroit Sector Headquarters”; [2] “Any complaint letters against any personnel assigned to Sault Sainte Marie Border Patrol Station filed between July 1, 2014 and December 15, 2014”; [3] “Copies of any documents submitted as a result of any requests for information (RFIs) or Congressional Inquiries into any allegations made against any Border Patrol personnel assigned to Sault Sainte Marie, Michigan station between July 1, 2014 and December 2015”; [4] “The names of any Border Patrol personnel whose actions were investigated as a result of any allegations made between July 1, 2014 and December 15, 2014”; [5] “A copy of any plans or After Action Reports

(AARs) regarding a drill occurring on or about November 1, 2014 having to do with dairy farm arrests and a congressional inquiry.” Exhibit F.

16. On April 8, 2018, CBP sent an automated notice that acknowledges receipt of the request and assigned reference number CBP-2018-035911 to the matter. Exhibit G.

17. Over the next few months, PIERCE asked CBP many times for an update regarding the request.

18. On January 1, 2019, understanding CBP’s failure to respond to this and other requests as constructive denials, PIERCE appealed. Exhibit C.

19. The appeal was assigned reference number CBP-AP-2019-020116. Exhibit C.

20. On February 7, 2019, in its letter to PIERCE, CBP treated the appeal as a “letter inquiring about a FOIA request.” In this letter, CBP confirmed receipt the FOIA request, but did not indicate when CBP would respond to the request. Exhibit H.

21. On March 15, 2019, in response to PIERCE’s request for assistance, Office of Government Information Services (OGIS) further informed that CBP denied the appeals because Pierce’s requests are pending. OGIS also included that CBP “does not consider its delay in responding your requests to be adverse determinations subject to appeal.” Exhibit E.

22. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

MARCH 9, 2018, FOIA REQUEST (BACKGROUND INVESTIGATION)

23. On March 9, 2018, PIERCE submitted a FOIA request to CBP for the following records: [1] “Documents relating to the periodic background investigation of BPA George Hampton Pierce Jr (DOB 04/09/1978), completed about January 2018. This includes reports, notes, memorandums, interviews, records of conversation and emails used in the investigation or decision making”; [2] “Documents supporting the hiring decisions relating to job announcement

USBP-OM-10050281-CS. This includes notes, scoring matrices, emails, and interview records used in scoring and ranking applicants. These may be found a Detroit Sector Headquarters”; [3] “Documents relating to the Employee of the Quarter program for USBP Detroit Sector. These documents should demonstrate the names of those nominated, the scoring, citations, memorandums or awards given, and any letters awarded for the year 2017”; [4] “Copy of an email from PAIC Shawn Wilson to Sault Sainte Marie station dated 07-17-2017 sent at about 2:25pm and any responses to that email”; [5] “Any emails in BPA George Pierce’s inbox with the word ‘congratulations’ in the header or body”; [6] “Lists or roster information demonstrating who was detained or housed on behalf of ICE, HSI, or USBP at the Chippewa County Jail in Sault Sainte Marie, Michigan during the period of January 1, 2015 to January 1, 2017. Responsive documents should include name, arrest date, citizenship or nationality, classification and release or transfer date.” Exhibit I.

24. Upon submitting the request, the request was automatically assigned reference number CBP-2018-037694. Exhibit I.

25. Over the next few months, PIERCE asked CBP many times for an update regarding the request.

26. On January 1, 2019, understanding CBP’s failure to respond to this and other requests as constructive denials, PIERCE appealed. Exhibit C.

27. The appeal was assigned reference number CBP-AP-2019-020116. Exhibit C.

28. On February 7, 2019, in its letter to PIERCE, CBP treated the appeal as a “letter inquiring about a FOIA request.” In this letter, CBP confirmed receipt of the FOIA request, but did not indicate when CBP would respond to the request. Exhibit J.

29. On March 15, 2019, in response to PIERCE’s request for assistance, Office of Government Information Services (OGIS) further informed that CBP denied the appeals because

Pierce's requests are pending. OGIS also included that CBP "does not consider its delay in responding your requests to be adverse determinations subject to appeal." Exhibit E.

30. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

MARCH 20, 2018, FOIA REQUEST (MONDOUX EMAILS)

31. On March 20, 2018, PIERCE submitted a FOIA request to CBP for the following records: [1] "Documents in BPA David Mondoux's Outlook email account that contain 'BPA George Pierce', 'BPA Pierce', or 'GP' in the subject line or body, and releasable attachments or responses to these emails when searched by a keyword search. These emails should be limited to the period from June 1, 2017 to the final date that this request is processed. These emails are located at Detroit Sector Headquarters or Gibraltar station"; [2] "Documents in BPA Brett Laug's Outlook email account that contain 'BPA George Pierce,' 'BPA Pierce,' or 'GP' in the subject line or body, and releasable attachments or responses to these emails when searched by a keyword search. These emails should be limited to the period from June 1, 2017 to the final date that this request is processed. These emails are located at Detroit Sector Headquarters or Sault Saint Marie Station"; [3] "BPA George Pierce's resignation memorandum and any documents received or generated by SOS Shawn Wilson relating to that resignation." Exhibit K.

32. On April 11, 2018, CBP sent an automated notice that acknowledges receipt of the request and assigned reference number CBP-2018-040734 to the matter. Exhibit L.

33. Over the next few months, PIERCE asked CBP many times for an update regarding the request.

34. On January 1, 2019, understanding CBP's failure to respond to this and other requests as constructive denials, PIERCE appealed. Exhibit C.

35. The appeal was assigned reference number CBP-AP-2019-020116. Exhibit C.

36. On February 7, 2019, in its letter to PIERCE, CBP treated the appeal as a “letter inquiring about a FOIA request.” In this letter, CBP confirmed receipt the FOIA request, but did not indicate when CBP would respond to the request. Exhibit M.

37. On March 15, 2019, in response to PIERCE’s request for assistance, Office of Government Information Services (OGIS) further informed that CBP denied the appeals because Pierce’s requests are pending. OGIS also included that CBP “does not consider its delay in responding your requests to be adverse determinations subject to appeal.” Exhibit E.

38. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

NOVEMBER 7, 2018, FOIA REQUEST (DETROIT SECTOR)

39. On November 7, 2018, PIERCE submitted a FOIA request for various records pertaining to Detroit Sector Border Intelligence Center. Exhibit N.

40. Upon submitting the request, the request was automatically assigned reference number CBP-2018-009179. Exhibit N.

41. On August 30, 2019, PIERCE asked CBP for an update regarding the request, but CBP never responded. Exhibit O.

42. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

OCTOBER 18, 2019, FOIA REQUEST (GERONIMO EMAILS)

43. On October 18, 2019, PIERCE submitted a FOIA request to CBP pertaining to Assistant Director Javier Geronimo’s emails that “contain the following search terms in the address block, title, or body: ‘Pierce,’ ‘GP,’ ‘Union,’ ‘BPA-I,’ ‘Audit,’ ‘Facebook,’ ‘WhatsApp,’ ‘Telegram,’ ‘Signal,’ ‘Nextgen,’ and ‘PAIG.’” Exhibit P.

44. On October 20, 2019, CBP acknowledged receipt of the request and assigned reference number CBP-2020-004998 to the matter. Exhibit Q.

45. As the date of this filing, CBP has not issued a determination and has produced no records responsive to the request.

COUNT I – FEBRUARY 18, 2018, CBP’S FOIA VIOLATION (VINCENT EMAILS)

46. The above paragraphs are incorporated herein.

47. CBP is a component of DHS and is subject to FOIA.

48. The requested records are not exempt under FOIA.

49. CBP has refused to produce the requested materials in a timely manner.

COUNT II – MARCH 3, 2018, CBP’S FOIA VIOLATION (THOMPSON EMAILS)

50. The above paragraphs are incorporated herein.

51. CBP is a component of DHS and is subject to FOIA.

52. The requested records are not exempt under FOIA.

53. CBP has refused to produce the requested materials in a timely manner.

**COUNT III – MARCH 9, 2018, CBP’S FOIA VIOLATION
(BACKGROUND INVESTIGATION)**

54. The above paragraphs are incorporated herein.

55. CBP is a component of DHS and is subject to FOIA.

56. The requested records are not exempt under FOIA.

57. CBP has refused to produce the requested materials in a timely manner.

COUNT IV – MARCH 20, 2018, CBP’S FOIA VIOLATION (MONDOUX EMAILS)

58. The above paragraphs are incorporated herein.

59. CBP is a component of DHS and is subject to FOIA.

60. The requested records are not exempt under FOIA.

61. CBP has refused to produce the requested materials in a timely manner.

COUNT V – NOVEMBER 7, 2018, CBP’S FOIA VIOLATION (DETROIT SECTOR)

- 62. The above paragraphs are incorporated herein.
- 63. CBP is a component of DHS and is subject to FOIA.
- 64. The requested records are not exempt under FOIA.
- 65. CBP has refused to produce the requested materials in a timely manner.

COUNT VI – OCTOBER 18, 2019, CBP’S FOIA VIOLATION (GERONIMO EMAILS)

- 66. The above paragraphs are incorporated herein.
- 67. CBP is a component of DHS and is subject to FOIA.
- 68. The requested records are not exempt under FOIA.
- 69. CBP has refused to produce the requested materials in a timely manner.

WHEREFORE, PIERCE asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiff attorneys’ fees and costs;
- v. award such other relief the Court considers appropriate.

Dated: December 4, 2019

RESPECTFULLY SUBMITTED,

/s/ Merrick J. Wayne

Attorney for Plaintiff
GEORGE PIERCE

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